

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SAUDY GUERRERO,  
                    Petitioner,

v.

UNITED STATES OF AMERICA,  
                    Respondent.  
-----X

:  
:  
:  
**ORDER**

: 19 CV 4130 (VB)  
: S11 14 CR 768-09 (VB)

Petitioner has moved for leave to file an amended petition under 28 U.S.C. § 2255 in light of the Supreme Court’s decision in United States v. Davis, 139 S. Ct. 2319 (2019), which was decided after the initial Section 2255 motion was filed in this case. The motion for leave to amend was docketed on March 16, 2020. (Doc. #18 in 19cv4130). The government has not opposed the motion for leave to amend.

Petitioner has also moved for appointment of counsel. (Doc. #17 in 19cv4130).

Accordingly, it is hereby ORDERED:

1. Petitioner’s motion for leave to amend is GRANTED, without prejudice to any defenses the government wishes to assert. Petitioner’s amended Section 2255 motion (Doc. #16 in 19cv4130) is now the operative Section 2255 motion in this case.

2. **The government is directed to file its answer or other pleading in response to the amended Section 2255 motion by July 13, 2020.** Because the amended Section 2255 motion completely supersedes and replaces the initial Section 2255 motion, the government’s response shall fully address the arguments made in the amended Section 2255 motion as if it were the initial motion. If the government wishes to submit the Patel declaration dated December 5, 2019 (Doc. #13-1 in 19cv4130) as part of its response to the amended Section 2255 motion, it may do so. However, if in light of the arguments made in the amended Section 2255 motion the

government believes that a new declaration is required from Mr. Patel, the government may obtain and submit such a new declaration. (See Docs. ##6-7 in 19cv4130).

3. Petitioner shall have until August 13, 2020, to file a reply to the government's response to the amended Section 2255 motion. Absent further order of the Court, the amended Section 2255 motion will be considered fully submitted as of that date.

4. Petitioner's motion for appointment of counsel is DENIED WITHOUT PREJUDICE. At this stage of the proceedings, there is no reason to believe an evidentiary hearing will be required in this case. Moreover, without making any final determination as to the merits of petitioner's claims, a preliminary review of the amended Section 2255 motion indicates that petitioner's claims lack sufficient merit to warrant the appointment of counsel. Finally, the Court has considered the type and complexity of this case and petitioner's ability to present the case. The Court does not find any exceptional circumstances meriting the appointment of counsel at this time.

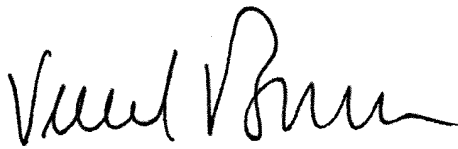
**All further papers submitted in this matter must bear both the civil docket number and the criminal docket number and must be filed in both dockets.**

The Clerk is instructed to terminate the motion for leave to amend (Doc. #18 in 19cv4130).

Chambers will mail a copy of this Order to petitioner at the address on the civil docket.

Dated: April 13, 2020  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge